



## Senate

General Assembly

**File No. 56**

February Session, 2008

Senate Bill No. 255

*Senate, March 19, 2008*

The Committee on Labor and Public Employees reported through SEN. PRAGUE of the 19th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

***AN ACT CONCERNING ADDITIONAL BENEFITS FOR WAGE LOSS  
UNDER THE WORKERS' COMPENSATION ACT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 31-308a of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2008*):

3 (a) In addition to the compensation benefits provided by section 31-  
4 308 for specific loss of a member or use of the function of a member of  
5 the body, or any personal injury covered by this chapter, the  
6 commissioner, after such payments provided by said section 31-308  
7 have been paid for the period set forth in said section, may award  
8 additional compensation benefits for such partial permanent disability  
9 equal to seventy-five per cent of the difference between the wages  
10 currently earned by an employee in a position comparable to the  
11 position held by such injured employee prior to his injury, after such  
12 wages have been reduced by any deduction for federal or state taxes,  
13 or both, and for the federal Insurance Contributions Act in accordance  
14 with section 31-310, and the weekly amount which such employee will

15 probably be able to earn thereafter, after such amount has been  
16 reduced by any deduction for federal or state taxes, or both, and for  
17 the federal Insurance Contributions Act in accordance with section 31-  
18 310, to be determined by the commissioner based upon the nature and  
19 extent of the injury, the training, education and experience of the  
20 employee, the availability of work for persons with such physical  
21 condition and at the employee's age, but not more than one hundred  
22 per cent, raised to the next even dollar, of the average weekly earnings  
23 of production and related workers in manufacturing in the state, as  
24 determined in accordance with the provisions of section 31-309. If  
25 evidence of exact loss of earnings is not available, such loss may be  
26 computed from the proportionate loss of physical ability or earning  
27 power caused by the injury. The duration of such additional  
28 compensation shall be determined upon a similar basis by the  
29 commissioner, but in no event shall the duration of such additional  
30 compensation exceed [the lesser of (1) the duration of the employee's  
31 permanent partial disability benefits, or (2) five hundred twenty  
32 weeks] the maximum number of weeks of compensation allowed  
33 under subsection (b) of section 31-308 for specific loss of the affected  
34 member or use of that member of the body, regardless of the number  
35 of weeks of compensation originally awarded to the employee for such  
36 injury. Additional benefits provided under this section shall be  
37 available only to employees who are willing and able to perform work  
38 in this state.

39 (b) (1) Notwithstanding the provisions of subsection (a) of this  
40 section, additional benefits provided under this section shall be  
41 available only when the nature of the injury and its effect on the  
42 earning capacity of an employee warrant additional compensation.

43 (2) If additional compensation is awarded under subsection (a) of  
44 this section, the commissioner shall state the basis for such award, and  
45 such statement shall include an evaluation of the nature and extent of  
46 the injury, the training, education and experience of the employee and  
47 the availability of work for persons with such physical condition at the  
48 employee's age.

This act shall take effect as follows and shall amend the following sections:
---

Section 1	<i>October 1, 2008</i>	31-308a
-----------	------------------------	---------

**LAB**      *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

### **OFA Fiscal Note**

#### **State Impact:**

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Dept. of Administrative Services - Workers' Comp. Claims; Treasurer; Various State Agencies	Various - Cost	See Below	See Below

#### **Municipal Impact:**

Municipalities	Effect	FY 09 \$	FY 10 \$
All Municipalities	STATE MANDATE - Cost	See Below	See Below

### **Explanation**

The bill extends the maximum number of weeks of discretionary workers' compensation benefits for partial permanent disabilities (PPD) that may be awarded, and will result in a significant cost to the state and municipalities. Under current law, discretionary benefits (CGS 31-308a) are limited to the statutory duration of the claimant's PPD benefits (CGS 31-308). Under the bill, a claimant can receive discretionary benefits up to the maximum statutory benefit schedule regardless of the duration of the initial PPD award.

In FY 07, the Department of Administrative Services statewide workers' compensation program expended \$821,613 on discretionary benefits for 100 claimants.

As it is not known how many claimants will receive increased discretionary benefits under the bill, 38 discretionary benefit claims from May 2007 were sampled to illustrate the range of costs.

Under the bill, if each of these 38 claimants received the maximum

statutory discretionary benefits, costs to the state, over the life of the claims, would increase by \$4.3 million.

Under this bill, if these 38 claimants each received a 30% increase in utilization of the maximum statutory discretionary benefits, costs to the state, over the life of the claims, would increase by \$1.3 million.

Both cost examples are based on 38 claimants receiving discretionary benefits. The fiscal impact to the entire state workers' compensation program would be substantially greater as approximately 90 - 110 state employees receive discretionary benefits annually. Out year costs to the state will increase significantly as state employees receive discretionary benefits for a longer period of time.

It is anticipated that the fiscal impact of this bill will begin in FY 10 as the bill's effective date is October 1, 2008 and pertains to injuries on or after that date. Since discretionary benefits can only be awarded after PPD benefits have been paid, it is unlikely that there will be any costs associated with this bill in FY 09.

It is estimated that this bill will increase costs to the Second Injury Fund by \$390,000 in FY 10 as a result of increases in concurrent employment claim payments and the indemnity portion of uninsured employer claim payments.

### ***The Out Years***

Out year costs to the state will increase significantly as state employees receive discretionary benefits for a longer period of time.

**OLR Bill Analysis****SB 255*****AN ACT CONCERNING ADDITIONAL BENEFITS FOR WAGE LOSS UNDER THE WORKERS' COMPENSATION ACT.*****SUMMARY:**

This bill extends the maximum number of weeks of additional workers' compensation benefits for partial permanent disabilities that a workers' compensation commissioner may award after a claimant has exhausted the statutory schedule for regular benefits.

Under current law, a commissioner has the discretion to give additional weeks of benefits for a maximum period equal to the lesser of the duration of the initial benefits for partial permanent disability or 520 weeks. The duration of this discretionary benefit depends on the claimant's earnings loss due to the injury. This means if a claimant has a 30% loss in earnings at his or her new job, compared to the job held prior to the injury, then discretionary benefits are granted for up to 30% of the statutory schedule. For example, if for a particular injury the schedule calls for 100 weeks, the claimant would get up to 30 weeks. If earnings loss cannot be determined, the proportionate loss of physical ability is used to determine the percentage of the statutory schedule of benefits.

Under the bill, the claimant can receive the full duration of the statutory benefit schedule as discretionary benefits regardless of the duration of the initial benefit award. This applies whether the initial benefit is based on earnings loss or on proportionate loss of ability.

For most injuries, the statutory benefit schedule is well below 520 weeks. For example loss or loss of use of a master arm, 208 weeks; leg, 155 weeks; cervical spine, 117 weeks, back, 374 weeks; and heart, 520 weeks.

The bill also requires the commissioner to state the basis for any benefit extension, including (1) an evaluation of the injury; (2) the employee's training, education, and experience; and (3) the availability of work for people with such physical conditions at the employee's age.

EFFECTIVE DATE: October 1, 2008

## **BACKGROUND**

### ***Partial Permanent Disability***

The duration of partial permanent disability weekly benefits is determined by the statutory schedule for specific body parts (CGS § 31-308(b)).

### ***Discretionary Benefits***

A commissioner may grant additional benefits to a claimant after the claimant has received all of his partial permanent disability benefits under the statutory schedule if the injury results in the claimant's inability to find work or the new job pays less than the original job. The discretionary benefits are based on the employee's loss in earnings due to the injury or, when that cannot be determined, on the proportionate loss of physical ability.

## **COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable

Yea     7         Nay     1         (03/06/2008)